

## Public Document

FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND  
ELKEM METALS CO. AND GLOBE METALLURGICAL INC. v.  
UNITED STATES

Court No. 02-00232, Slip Op. 06-189 (December 22, 2006)

### SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand order from the Court of International Trade (CIT) in Elkem Metals Co., et al. v. United States, Slip Op. 06-189 (December 22, 2006) (Remand Order). In conformity with the decision of the Court of Appeals for the Federal Circuit (CAFC) in Elkem Metals Co. v. United States, 468 F.3d 795 (Fed. Cir. 2006) (Elkem Metals III), the Remand Order directs the Department to recalculate the dumping margin of Rima Industrial S/A (Rima) for the period covered by the July 1, 1999, through June 30, 2000, administrative review of the antidumping duty order on silicon metal from Brazil. In particular, the Remand Order directs the Department to recalculate the dumping margin for Rima using the methodology wherein the cost of value added taxes (VAT) paid by Rima on certain material inputs is fully offset in the calculation of constructed value (CV), through the use of VAT credits. The Remand Order further directs the Department to perform its recalculation in light of any adjustments made in the Final Results of Redetermination Pursuant to Court Remand, Elkem Metals Co. v. United States, (March 16, 2005) (Second Remand Redetermination). In accordance with the Remand Order, the Department has recalculated Rima's CV and dumping margin for the July 1, 1999, through June 30, 2000, period of review (POR). As a result of these recalculations, Rima's margin of dumping is 0.35 percent.

### BACKGROUND

On February 12, 2002, the Department published in the Federal Register a notice of final results of the antidumping duty administrative review on silicon metal from Brazil. See Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) (Final Results). In the Final Results, the Department did not include VAT in the calculation of Rima's CV. Rima received a final antidumping duty margin of 0.35 percent.

Elkem Metals Company and Globe Metallurgical Inc. (collectively petitioners) challenged the Department's Final Results, arguing that the Department erred in its CV calculation by not including certain VAT that Rima paid upon material inputs.

On January 29, 2004, the Department filed a motion for the CIT to remand this matter for the Department to recalculate Rima's CV. On February 25, 2004, the CIT remanded this matter to the Department.

In the first redetermination on remand, after an examination of Rima's underlying data, as well as an examination of interim findings, the Department determined that recalculation of Rima's CV was not warranted. See Final Results of Redetermination Pursuant to Court Remand; Elkem Metals Company and Globe Metallurgical Inc. v. United States, (June 8, 2004) (First Remand Redetermination). In the First Remand Redetermination, citing Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review (Silicomanganese), the Department stated that “. . . where a respondent demonstrates the recovery of the taxes paid on material inputs during the POR, we have determined that such taxes are not incurred and, therefore, do not constitute a material cost for the purposes of calculating CV.” See Silicomanganese, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at comment 15. Specifically, the Department found that Rima had demonstrated, by its use of VAT credits, that it recovered VAT paid on material inputs during the POR. Therefore, since we found that Rima recovered the VAT it paid during the POR, we did not include VAT in CV in the First Remand Redetermination.

In Elkem Metals v. United States, 350 F. Supp 2d 1270 (Ct. Int'l Trade 2004) (Elkem Metals I), the CIT remanded the Department's exclusion of certain VAT from Rima's CV and ordered the Department to include VAT paid by Rima in the calculation of CV. On March 16, 2005, the Department completed its Second Remand Redetermination wherein, pursuant to the CIT's instructions in Elkem Metals I, we recalculated Rima's CV to include VAT paid on certain inputs. In the Second Remand Redetermination, the Department corrected certain multiplication errors made by Rima in calculating its reported VAT amount. The resulting dumping margin for Rima remained *de minimis*. The CIT sustained the Department's Second Remand Redetermination. See Elkem Metals v. United States, Slip Op. 05-109 (August 26, 2005) (Elkem Metals II).

Petitioners appealed Elkem Metals II to the CAFC. Specifically, petitioners argued that Rima under-reported the amount of VAT it incurred and challenged the Department's acceptance of the reported VAT amount. The Department and Rima cross-appealed, arguing that the calculation of CV should account for the fact that VAT cost had been fully recovered through the use of VAT credits. On October 27, 2006, the CAFC concluded that the Department properly accounted for VAT in calculating CV in the Final Results. Specifically, the CAFC determined that the Department's conclusion that VAT paid by Rima should be excluded from CV was based upon a permissible construction of the Tariff Act of 1930, as amended. See Elkem Metals III at 2. Consequently, the CAFC found the question of whether Rima correctly reported VAT to the Department to be irrelevant to the final dumping margin. Accordingly, it determined petitioners' appeal to be moot and declined to address the issues presented by petitioners. The CAFC remanded the case to the CIT for proceedings consistent with its opinion.

On December 22, 2006, the CIT issued the Remand Order as described herein. On February 13, 2007, pursuant to the Remand Order, the Department released its “Draft Results of Redetermination Pursuant to Court Remand Elkem Metals Company and Globe Metallurgical Inc. v. United States (Draft Remand Results) to petitioners and Rima. On February 13, 2007, the Department set a deadline for interested parties to submit comments and rebuttal comments on the Draft Remand Results by February 20, 2007, and February 26, 2007, respectively. Neither

petitioners nor Rima submitted comments on the Department's Draft Remand Results.

## **DISCUSSION**

Pursuant to the CIT's Remand Order, the Department recalculated Rima's dumping margin in light of the adjustment made in the Second Remand Redetermination, but using the methodology promulgated in the Final Results and applied in the First Remand Redetermination. Specifically, in the Second Remand Redetermination, pursuant to the CIT's order in Elkem Metals II, the Department included certain VAT paid by Rima in the calculation of CV. However, pursuant to the CIT's Remand Order, and as done in the Final Results and the First Remand Redetermination, the Department, in these final results of redetermination, has excluded certain VAT paid by Rima from the calculation of CV. The Department has limited its adjustments to the factual circumstances circumscribed by the CAFC in Elkem Metals III, *i.e.*, where Rima fully offset its VAT costs using VAT credits. Accordingly, Rima's recalculated CV reflects a net VAT cost on material inputs of zero. Consequently, these results do not incorporate the error that was corrected in the Second Remand Redetermination, and no further adjustment to these results is necessary.

## **RESULTS OF REMAND DETERMINATION**

As a result of this redetermination, Rima's dumping margin for the period July 1, 1999, through June 30, 2000, is 0.35 percent. This rate has not changed from the rate announced in the February 12, 2002, final results of the ninth review.

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date